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**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/241,823	02/01/99	ZIESE	K 062891.0240

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TM21/1016

EXAMINER

DAM, T

ART UNIT

PAPER NUMBER

2122

#9

DATE MAILED: 10/16/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Advisory Action

Application No.  
09/241,823

Applicant(s)  
Ziese

Examiner  
Tuan Q. Dam

Art Unit  
2122



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Sep 24, 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

## THE PERIOD FOR REPLY [check only a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (See NOTE below);
- (b) ☐ they raise the issue of new matter. (See NOTE below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

4. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_

5. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in separate, timely filed amendment cancelling the non-allowable claim(s).

6. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_

7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 9-13, 22-24, and 26 (remain pending as proposed)

9. ☐ The proposed drawing correction filed on \_\_\_\_\_ a) ☐ has b) ☐ has not been approved by the Examiner.

10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

11. ☒ Other: See attached detailed action including PTO-892 form, and Interview Summary  
PTO-413 (Paper No. 8)

## DETAILED ACTION

### *Remarks*

1. Applicant requests cancellation of claims 1-8, 14-21, and 25 without prejudice or disclaimer. Claims 9-13, 22-24, and 26 remain pending and which have been fully reconsidered by the examiner. However, Applicant arguing for unobviousness from prior art teachings by traversing examiner's 103 rejections and/or challenges the examiner's Official notices still not persuasive, as will be addressed below. Thus, the examiner maintains final rejection of remaining claims 9-13, 22-24, and 26.

### *Information Disclosure Statement (IDS)*

2. The non-patent documents listed on the IDS, paper no. 2, pages 2-10, have been considered for the merit of the pending filed claims. Notice that, after a cursory review over the titles and abstracts of the provided IDS material noted above, examiner noted that the non-patent material on those pages 2-10 are only directed toward intrusion detection systems *per se* and not direct towards the pending filed claims, that is a manner of a method, a system for dynamically distributing updates of a program (version) in a network *per se*.

Also notice that, as to Applicant acknowledged of such intrusion detection systems that the examiner has been repeatedly referring to in previous Office actions (under IDS section of paper no. 4 at page 2, and paper no. 6 at page 5), that is the background section at page 2:32 to page 3:9 of the filed specification, stating:

Typically, network administrators use various levels of security measures to protect the network against unauthorized use. Intrusion detection system are commonly used to detect and identify

unauthorized use (*emphasis added*) ... In general, intrusion detection systems look for specific patterns ... known as intrusion signatures ... Conventional intrusion detection systems often use finite state machines ... specialized algorithms to identify intrusion signatures in network traffic. Detected intrusion signatures are reported to network administration.

*Official Notice*

3. Applicant demands for Official Notice references without any reasons on its face to raise doubt that such teaching concepts, i.e., *restoring*, *distributing* and *broadcasting*, are not available and/or commonly practiced in prior art at the time of the invention was made. However, in the spirit of customer service, examiner now providing such references as to claims 9-13 rejection and that will be further addressed below.

*Prior Art's Arguments - Rejections*

4. As to claim 9, the concept of restoring the original software (first version), in response to incorrect operation of the updated software (second version) (*emphasis added*), as noted by the examiner, is old and well known or practiced for updating software management and/or maintenance in a distributed network environment art. For example, *see* U.S. Patent '5,008,814' to Mathur, now made of record (for example, *see* Abstract and FIG. 2 with cut back to old software (restoring) feature at blocks 208 and 210).

As to claim 10, the concept of *distributing* the changed or updated software version (second), e.g., by enforcing or so called "push" technology, to other network's members (distributing the downloaded update to a disparate network site), as noted by the examiner, is old and well known for updating software management and/or maintenance in a distributed

network environment art. *See*, for example again, U.S. Patent '5,008,814' to Mathur (For example, see col. 150:16-21).

Notice that, Applicant has different reason for not combining by stating "*Van Hoff* unsuitable for its intended purpose as an update specific for one client would be applied to another client needing a different update" (*See* page 13, 2nd. para., of the response to final rejection) is not persuasive because (1) there is no "different update" called for in the claim; and (2) it is not necessary that a disparate network site (other client) needing a different update version (for example, the software updated version is part of the default, based, or standard software package within a distributed network), and accordingly *distributing* and/or enforcing a concurrent version within the distributed network would have been obvious, as set forth in claim 10 rejection of previous Office actions and as noted above.

As to claim 11, such claimed limitations as *restoring* and *distributing* the downloaded update to a disparate network site also have been addressed and/or covered in claims 9 and 10 as noted above.

As to claim 12, Applicant argues that (1) *Van Hoff*, abstract, teaches against broadcasting distribution of software as "the client initiates each update request without requiring any special broadcast networking infrastructure" (*See* page 14 of the response, 1st. para.). However, even that, *Van Hoff*, abstract, also suggests that "This method of automatic downloading of updates achieves for the client the same result (equivalent) as the broadcast distribution of software over a connection based network", as the examiner set forth in claim 12 rejection of previous Office actions, and *Van Hoff* also suggests that "this invention relates

to the broadcasting of code and data, and updates thereto, to a plurality of subscribers” (See col. 1:6-8). Thus, substituting an old and well known concept, *broadcast* distribution of software over a connection based network, for achieving the same result (equivalent) as in prior art would become apparent to one skilled in the pertinent art at the time of the invention was made to utilize/recognize as such equivalencies teachings in prior art and implement it at will. (2) Moreover, Applicant argues for an unclaimed merit of distinction by stating that “Moreover, there is no teaching in *Van Hoff* for a program to automatically broadcast an update message to other programs, after an update has been automatically downloaded by the first program from a remote site” (See page 14:3-7 of the response). Instead, the plain language of the claim just called for “*broadcasting over a network an update message*”, thus argument is moot. After all, such old and well known concept as the examiner set forth in claim 12 rejection in previous actions that covering *broadcasting over a network an update message* can be seen in prior art teachings such as U.S. Patent ‘5,754,785’ to Lysik et al, now made of record, (for example, see col. 3:16-17 and col. 4:47-49).

As to claim 13, such claimed limitations as *restoring* also have been addressed and/or covered in claim 9 as noted above.

As to claim 22, as set forth in previous actions (see claim 14 or claim 25), intrusion detection system with intrusion detection sensor is known in the intrusion detection art, as noted above. Thus, it would become apparent to one skilled in the pertinent art at the time of the invention was made to implement and/or applying *Van Hoff* teachings for such a typical intrusion detection system, as in prior art, since *Van Hoff* teachings regardless of what

application program (channel) being updated and that would including such a *distributing* feature as also has been addressed and/or covered in claim 10 above, and accordingly it would also have been obvious.

Furthermore, it has been settle that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. **In re Keller**, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

#### *Conclusion*

5. The background art of interest is cited by the examiner. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Tuan Dam whose telephone number is (703) 305-4552. The examiner can normally be reached on Tuesday-Friday from 7:30 AM to 5:00 PM. The examiner can also be reached on alternate Mondays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Kevin Teska, can be reached on (703) 305-9704.

**Any response to this Final action should be mailed to:**

**Box AF**

Commissioner of Patents and Trademarks  
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**or faxed to:**

(703) 746-7238, (for formal communications; please mark "EXPEDITED  
PROCEDURE")

**Or:**

(703) 746-7240 (for informal or draft communications, please label  
"PROPOSED" or "DRAFT")

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Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,  
Arlington, VA., 22202. Fourth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or  
proceeding should be directed to the Group receptionist whose telephone number is (703) 305-  
3900.

10/10/01  
TQD



TUAN Q. DAM  
PRIMARY EXAMINER